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AUG 28 2006

OFFICE OF PETITIONS

In re Application of	:	
Walke et al.	:	
Application No. 09/863,823	:	DECISION
Filed: May 23, 2001	:	ON PETITION
Attorney Docket Number:	:	
LEX-0180-USA	:	

This is a decision in response to the "Petition Under 37 CFR 1.181(a) Requesting Withdrawal of Holding of Abandonment", filed October 24, 2005. The delay in treating this petition is regretted.

The petition is dismissed.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely file an appeal brief after filing a Notice of Appeal. In response to final Office action, mailed May 19, 2003, Applicant filed a Notice of Appeal on August 22, 2005. Thereafter, Applicant was given a period of two (2) months to file an appeal brief. Extensions of time under 37 CFR 1.136(a) were available. No response having been received, the application became abandoned the date the brief was due, October 22, 2005. A Notice of Abandonment was mailed October 6, 2004 and re-mailed September 21, 2005. See, MPEP 1205, 1214.

The instant petition

Applicant files the instant petition wherein Applicant avers that an Appeal Brief was timely filed, including a request for a three (3) month extension of time, on January 29, 2004, and was received in this Office as evidenced by Applicant's return-receipt postcard. In support of this assertion, Applicant provides a copy of a return-receipt postcard acknowledging receipt of, *inter alia*, an Appeal Brief and a petition for Extension of Time. Applicant also files a copy of the Appeal Brief, but has not provided a copy of the Petition for Extension of Time. Office records indicate that no extension of time fee was charged to Applicant.

Applicable law, Rules and MPEP

The MPEP provides that "applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides prima facie evidence that the reply was timely filed." See MPEP § 503.

Prima facie evidence creates a rebuttable presumption. The USPTO file is the official record of the papers originally filed in this application, and Office records do not indicate that an extension of time was filed. Applicant has also not filed a copy of the petition for extension of time. As such, there is a question as to whether the required extension of time was filed.

In view of the foregoing, the petition may not be granted at this time. Applicant must file a copy of the petition for extension of time before the petition may be granted.

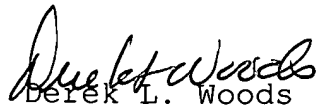
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

A handwritten signature in black ink, appearing to read "Derek L. Woods". The signature is fluid and cursive, with the first name "Derek" and last name "Woods" clearly distinguishable.

Derek L. Woods
Attorney
Office of Petitions